is one by operation of law which does not require the assent by the lessor. *Gazlay* v. *Williams*, 210 U. S. 41, discussed in 22 HARV. L. REV. 146; *In re Gutman*, 197 Fed. 472; *Doe* v. *Bevan*, 3 M. & S. 353. See JONES, LANDLORD AND TENANT, § 466; WOODFALLS, LANDLORD AND TENANT, 19 ed., 319. Hence such assent cannot be treated as consideration.

LIBEL AND SLANDER — DAMAGES — EVIDENCE: MAY PLAINTIFF GIVE EVIDENCE OF GOOD CHARACTER IN AGGRAVATION OF DAMAGES? — In an action for slander the plaintiff was permitted to introduce evidence of his honesty. It had not been challenged by the defendant either by evidence or plea of justification. *Held*, that the evidence was properly admitted. *Deitchman* v. *Bowles*, 179 S. W. 249 (Ky.).

In actions of defamation, the reputation of the plaintiff is presumed to be good until proof to the contrary. Many courts and writers have based thereon a rule that, unless his character has been attacked, the plaintiff cannot offer evidence of his good character in aggravation of damages. *Guy* v. *Gregory*, 9 C. & P. 584, 587; *Blakeslee* v. *Hughes*, 50 Oh. St. 490, 34 N. E. 793. See ODGERS, LIBEL AND SLANDER, 4 ed., 366; 1 WIGMORE, EVIDENCE, § 76. *Contra*, *Adams* v. *Lawson*, 17 Gratt. (Va.) 250; *Hitchcock* v. *Moore*, 70 Mich. 112, 113, 37 N. W. 914, 916. *Cf. Stafford* v. *Morning Journal Ass'n*, 142 N. Y. 598, 37 N. E. 625. See 4 SUTHERLAND, DAMAGES, 3 ed., § 1211. But the previous reputation of the plaintiff is certainly probative of the extent of his injury, and it seems illogical to exclude relevant evidence merely because there is a *prima facie* presumption which makes the rendering of such evidence no longer a prerequisite to recovery. See *Adams* v. *Lawson*, 17 Gratt. (Va.) 250, 260. Especially is this so when the presumption, as here, covers a conclusion incapable of accurate definition; for the plaintiff's character may be appreciably better than the impression that an instruction that "the plaintiff's character is presumed to be good" would convey to the jury, and he should have an opportunity to prove it so. See *Shroyer* v. *Miller*, 3 W. Va. 158, 161. Again, the very nature of the action tends to lower the plaintiff's reputation below par in the minds of the jury, for in all cases of defamation, at least that attack on the plaintiff's character on which the suit is based is before the jury, and such accusations, though not believed, still tend to poison the minds of the hearers against the reputation of the person defamed. Finally, as the principal redress sought in most cases of libel or slander is the vindication of the plaintiff before the eyes of the community, to deny him the right to prove his good character is to deprive him of the most effective means of obtaining that relief which he seeks and to which he is entitled. *Bennett* v. *Hyde*, 6 Conn. 24.

SURETYSHIP — SURETY'S DEFENSES: GENERAL PRINCIPLES OF CONTRACT — PARTNERSHIP AS PRINCIPAL: EFFECT OF DISSOLUTION ON CONTINUING GUARANTY. — The plaintiff became surety to the defendant county for any deposits it might make in "the Hallock Bank." No outsider knew which particular members of a certain family owned the bank, nor whether it was a corporation, a partnership, or an individual enterprise. On the failure of the bank the plaintiff paid its debt to the defendant. The plaintiff later learned that the bank had been a partnership, and that one who was a partner at the time the plaintiff became surety had died before the debt to the defendant was incurred. The plaintiff now sues the defendant county to recover back the amount he paid. *Held*, that he may recover. *Richards* v. *Steuben County*, 155 N. Y. Supp. 571 (Sup. Ct.).

The contract of an accommodation surety is strictly construed in his favor, and cannot be extended by implication beyond its exact terms. *City of Sterling* v. *Wolf*, 163 Ill. 467, 45 N. E. 218; *State* v. *Dayton*, 101 Md. 598, 61 Atl. 624. An instance of this is the established rule that the surety for a partnership is

entirely released from liability for subsequent partnership obligations by any change in the membership of the firm, because he contracted to be liable for the debts of the original firm only. *University of Cambridge* v. *Baldwin*, 5 M. & W. 580; *Byers* v. *Hickman Grain Co.*, 112 Ia. 451, 84 N. W. 500; *Dupee* v. *Blake*, 148 Ill. 453, 35 N. E. 867. See 14 HARV. L. REV. 627. However, if the guaranty shows the intention of the parties that it should survive changes in the partnership, the surety will continue liable for the obligations of the new firm. See *Backhouse* v. *Hall*, 6 B. & S. 507, 520; *Burch* v. *De Rivera*, 53 Hun 367, 369, 6 N. Y. Supp. 206, 207. Likewise, since a special guaranty is held unassignable, a change in the membership of a partnership which is the creditor of the principal, discharges the surety, unless the contrary intention of the parties appears. *Pemberton* v. *Oakes*, 4 Russ. 154; *Schoonover* v. *Osborne*, 108 Ia. 453, 79 N. W. 263; *Bennett* v. *Draper*, 139 N. Y. 266, 34 N. E. 791. In one case such contrary intention was found from the fluctuating nature of the firm. *Metcalf* v. *Bruin*, 12 East 400. In the present case the fact that the sureties were ignorant of the nature of the bank's ownership seems clearly to indicate their intention that it was a guaranty of the bank as an institution not as a partnership, and thus that the guaranty should survive any change in the firm. *Cf. Barclay* v. *Lucas*, 1 T. R. 291, note. See BRANDT, SURETYSHIP, 3 ed., § 138.

TRUSTS — FOLLOWING TRUST PROPERTY — CONFUSION OF TRUST FUNDS WITH TRUSTEE'S OWN PROPERTY. — A trust company mingled trust funds in its possession with its general assets. It thereupon became insolvent. The injured *cestuis* claim priority to the extent of the trust funds. *Held*, that no right to priority exists. *Commonwealth* v. *Tradesmen's Trust Co.* (Nos. 1, 2, 3), 95 Atl. 574, 577, 578 (Pa.).

"An abuse of trust can confer no rights on the party abusing it, nor on those who claim in privity with him." *Taylor* v. *Plumer*, 3 M. & Sel. 562, 574. Nor does equity any longer find a difficulty in following money into a larger sum in which it has been mingled. *Knatchbull* v. *Hallett*, 13 Ch. Div. 696; *National Bank* v. *Insurance Co.*, 104 U. S. 54. See A. W. Scott, "Right to Follow Money Wrongfully Mingled with Other Money," 27 HARV. L. REV. 125. It should make no difference that the sum in which the funds are mingled is the trustee's whole estate. Of course if the funds themselves have been expended the *res* is gone and the *cestui* can have no priority. *Bircher* v. *Walther*, 163 Mo. 461, 63 S. W. 691; *Metropolitan National Bank* v. *Campbell Commission Co.*, 77 Fed. 705. But after an improper mixture the trustee must show that the funds he has expended from the mass are the *cestui's* part of it. *Knatchbull* v. *Hallett*, *supra*; *Widman* v. *Kellogg*, 22 N. Dak. 396, 133 N. W. 1020. And if the funds have been paid into the estate and not paid out again, the *res* is there, and equity should follow it. *Harrison* v. *Smith*, 83 Mo. 210; *People* v. *City Bank of Rochester*, 96 N. Y. 32; *McLeod* v. *Evans*, 66 Wis. 401. See S. Williston, "Right to Follow Trust Property," 2 HARV. L. REV. 28, 36. See *contra*, *Empire State Surety Co.* v. *Carroll County*, 194 Fed. 593. Priority is here denied on the old ground that money has no earmarks. The necessary corollary is fearlessly applied: the *cestuis* are postponed to the insolvent's general depositors under a statute preferring depositors before ordinary creditors.

WILLS — PRESUMPTION OF SURVIVORSHIP — DISPOSITION WHERE TESTATOR AND PRINCIPAL BENEFICIARY DIE IN SAME DISASTER. — A husband and wife each named the other as principal beneficiary in their wills, each providing that if the other died first, their foster son should become the sole beneficiary. Both were frozen to death in a snowstorm, there being no evidence tending to show which died first. The next of kin now contest the foster son's